

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

FILED  
at \_\_\_ O'clock & \_\_\_ min. M

JUL 12 2001

BRENDA K. ARGOE, CLERK  
United States Bankruptcy Court  
Columbia, South Carolina (18)

IN RE: )

Gloria J. Riley )

Debtor. )

Case No. 98-01998-W  
Chapter 13

ENTERED

JUL 13 2001

K.E.P.

ORDER DENYING MOTION TO SET VALUE OF COLLATERAL  
UNDER 11 U.S.C. § 506

THIS MATTER comes before the Court upon the Modified Notice, Chapter 13 Plan and Related Motions filed by the above-captioned Debtor on May 29, 2001 and the Objection to Motion to Set Value of Collateral Under 11 U.S.C. § 506<sup>1</sup> filed by Arcadia Financial Ltd. (hereinafter "Arcadia") on May 31, 2001. Based on the Modified Notice, Chapter 13 Plan and Related Motions, the Objection to Motion to Set Value of Collateral Under 11 U.S.C. § 506, the arguments of counsel and the entire record of the instant Chapter 13 case, the Court makes the following Findings of Fact and Conclusions of Law:<sup>2</sup>

FINDINGS OF FACT

1. Gloria J. Riley ("Debtor") filed a petition under Chapter 13 of the Bankruptcy Code on March 6, 1998 (hereinafter "Petition Date").
2. Arcadia possesses a secured claim against Debtor secured by a 1994 Chrysler New

<sup>1</sup> Further references to the bankruptcy Code shall be by section number only.

<sup>2</sup> The Court notes that to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

Yorker, Serial Number 2C3HD46F1RH320600 (hereinafter “1994 Chrysler New Yorker”).

3. As of the Petition Date, Debtor was indebted to Arcadia in the amount of \$13,869.99 as provided by the Agreement. On June 24, 1998, Arcadia filed a Proof of Claim for the total amount of \$13,869.99 plus 8.25% interest.<sup>3</sup>
4. Debtor’s original Chapter 13 Plan did not include a Motion to Value the 1994 Chrysler New Yorker. Rather, the Plan provided that Arcadia would receive \$173.00 or more each month with interest at the rate of 8.25% per annum until the net balance of Arcadia’s claim was paid in full. The blanks in the form Chapter 13 Plan related to the motion to value Arcadia’s collateral were not completed by the Debtor. Paragraph 8 of said Plan also provided that “[u]nless the plan provides otherwise, a secured creditor retains the lien until the allowed amount of the secured claim is paid .”<sup>4</sup>
5. The Court confirmed Debtor’s Chapter 13 Plan, as amended on April 30, 1998, by a Confirmation Order entered on May 20, 1998.
6. On or about May 7, 2001, Debtor served a Motion to Set Value of Collateral Under §506. This Motion was never filed with the Bankruptcy Court, although it was served on Arcadia and the Standing Trustee.
7. On May 29, 2001, Debtor filed the Modified Notice, Chapter 13 Plan and Related Motions (hereinafter “Motion”). The modified Plan would provide as follows:

Secured debt—Payments of \$173.00 or more per month to Arcadia

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<sup>3</sup> The Proof of Claim specified that \$1,944.99 was unsecured and \$11,925.00 of the claim plus 8.25% interest was the secured portion of the claim.

<sup>4</sup> Pursuant to LBR 3015-1(c), “[i]n order to obtain a determination of the value of a claim or collateral pursuant to 11 U.S.C. § 506(a), a debtor shall include such motion in the Form Plan.

Financial until the net balance of the lien plus 8.25% interest has been paid in full. If lien is to be valued, the debtor hereby moves to value the lien at \$7,600.00 in accordance with SC LBR 3015-1 and the notice attached hereto. The basis of the debtor's value is as follows: NADA and comparable sales. Liens senior to the above-named creditor are held by the following creditors in the following amounts: n/a.

### CONCLUSIONS OF LAW

In the modified Plan, Debtor seeks, some twenty-four months after confirmation, to modify her Chapter 13 Plan to value the 1994 Chrysler New Yorker. The Motion, which is contained within her Modified Chapter 13 Plan, attempts to value the 1994 Chrysler New Yorker at \$7,600.00, its NADA retail value as of May 2001.

The Court finds that a debtor is bound by the terms of her confirmed Chapter 13 Plan. Section 1327(a) states, in pertinent part, "[the provisions of a confirmed plan bind the debtor and each creditor." This language has been interpreted to mean that a plan is *res judicata* as to all issues that were or could have been litigated before confirmation. *In re Linkous*, 990 F.2d 160, 166 (4<sup>th</sup> Cir. 1993). In this case, Debtor's original Chapter 13 Plan contained no motion to value Arcadia's collateral, as required by LBR 3015-1, despite the fact that she had ample opportunity to move for a valuation. The Court concludes that the doctrine of *res judicata* requires a holding that Debtor cannot at this late date move to value Arcadia's collateral. Thus, Debtor is bound by the terms of her original Chapter 13 Plan with regard to the treatment of Arcadia's secured claim.

Furthermore, there are limited exceptions to the holding that a confirmed Chapter 13 plan is *res judicata* as to all issues decided or that could have been decided at a hearing on confirmation. In fact, a debtor may only modify the terms of her confirmed Plan if she can meet the standards set forth in § 1329 and can demonstrate that there has been a substantial,

unanticipated change of circumstances in his or her financial condition. *See Arnold v. Weast (In re Arnold)*, 869 F.2d 240 (4<sup>th</sup> Cir. 1989); *see also In re Dennis*, C/A No. 98-04378-W (Bankr. D.S.C. 3/21/2001); *In re Bouton*, C/A No. 98-09296-B (Bankr. D.S.C. 11/13/2000). As this Court has previously noted in the case of *In re Dennis*, “[i]n order to maintain consistency in the bankruptcy procedures in this District, this Court is inclined to follow precedent and find that, due to the lack of unanticipated and substantial change in circumstances in this case, . . . the Motion to Modify is denied.”

Similarly, in this case, the Court finds that Debtor has not met the standard required to permit her to modify her confirmed Chapter 13 Plan. Debtor, in fact, has not demonstrated any change of circumstances justifying the proposed modification, nor has Debtor met her burden so as to allow relief from the Confirmation Order more than one year after its entry. Consequently, Debtor’s Motion cannot be allowed.

NOW, THEREFORE, it is ORDERED that Arcadia’s Objection be and is hereby sustained and Debtor’s Motion be and is hereby denied.

This the 12<sup>th</sup> day of July, 2001.

  
UNITED STATES BANKRUPTCY JUDGE

**CERTIFICATE OF MAILING**

The undersigned deputy clerk of the United States  
Bankruptcy Court for the District of South Carolina hereby certifies  
that a copy of the document on which this stamp appears  
was mailed on the date listed below to: *(BAC)*

**JUL 13 2001**

**DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE**

**KIRK E. PORTH**

Deputy Clerk

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